

## CHAPTER 4 PROCEDURES

[Prior to 7/27/88, see Substance Abuse, Iowa Department of[805] Ch 4]

**643—4.1(17A) Request for rule change.** Any person may petition the department to adopt, amend, or repeal any rule. To be valid the petition shall:

1. Be addressed to the chairperson of the commission.
2. Be in writing.
3. State the name(s) of those requesting the change.
4. Set forth the new proposed rule, the rule as it would appear after the requested amendment, or the rule as it would appear subsequent to the requested deletions.
5. Describe specifically the reasons for the requested change.
6. Detail the statutory authority under which the new rule, if any, would exist.

**4.1(1)** Commission action. Within 60 days of the receipt by the commission of the proposed rules, the requested modification or the requested deletion, the commission shall either deny the request stating the reasons for the denial in writing or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

**4.1(2)** Reserved.

**643—4.2(17A) Declaratory decision.** Any interested person may submit to the chairperson of the commission a petition regarding the application of a statute, rule, decision, order or other written statement of law or policy to a specific factual background of the question, the statute, rule, decision, order or other written statement of law or policy deemed applicable, and the reasons for the request. The commission shall render a written decision within 30 days unless the commission is unable to reach a decision on the facts as presented. Should the commission find the facts insufficient then no decision need be issued and the commission shall request that the factual situation be clarified by an amendment to the petition. Failure by a requesting party to amend the petition within 15 days will cause the commission to dismiss the petition.

**643—4.3(17A) Informal procedures.** Parties to any factual controversy that could result in a contested case may meet informally for the purpose of settling the dispute. The parties may reach any decision they desire, subject only to the substantive requirements of the department.

The commission or a designee may be asked to suggest any course of action the commission deems appropriate, but any suggestions by the commission is not binding unless the parties voluntarily adopt it as their agreement.

**643—4.4(17A) Notice of hearings for contested cases.** The chairperson of the commission shall send notice of the hearing to all interested parties by certified mail or by personal service as in civil actions, at least ten days prior to the date of the hearing unless a shorter period of time is agreed upon by all parties. The notice shall include the time, the place and nature of the hearing and a reference to the particular sections of the statutes and rules involved.

**4.4(1)** Hearings shall be conducted in a manner pursuant to Iowa Code chapter 17A, presided over by a hearing officer or the commission as a whole or a designee.

**4.4(2)** The record in a contested case shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings therein.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the officer presiding at the hearing.

**643—4.5(17A) Ex parte communications.** The notice required pursuant to Iowa Code section 17A.4, concerning ex parte communications in contested cases, shall include the name of the hearing officer, the name of the party to whom the communication will occur, the nature of the communication, the place of the communication and the time of the communication. The notice shall be in writing and shall be delivered either by personal service as in civil actions or by certified mail, return receipt requested. The time of the communication must be at least 30 days subsequent to the service of the notice.

**4.5(1) Administrative law judge.** Any individual who is assigned to hear a contested case who communicates, directly or indirectly, in connection with any issue of fact or law in that contested case with any party or the representative of any party to that contested case, without giving the required notice and opportunity to be heard to all parties shall be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

Any party to a contested case or the representative of any party who communicates, directly or indirectly, in connection with any issue of fact or law in that contested case with any person assigned to hear that case without giving the required notice and opportunity to be heard to all parties shall be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

**4.5(2) Sanctions—parties.** Sanctions against the parties or their representatives who communicate with the administrative law judge on any issue of fact or law in a contested case without giving notice and the opportunity to participate to all parties may include a decision against the party on the merits; censure, suspension, or revocation of the privilege to practice before the department; or whatever may be just and equitable.

**4.5(3) Sanctions—administrative law judge.** Sanctions against the individual who was assigned to hear the case and participated in communications with any party or the representative of any party on any issue of fact or law in that contested case without giving notice and the opportunity to participate to all parties may include: censure, suspension or dismissal from the department or whatever may be just and equitable.

**643—4.6(17A) Decisions and orders—rehearing.**

**4.6(1) Proposed or final decision.** A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of the fact and conclusions of law, separately stated. Findings of the fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with department rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by Iowa Code chapter 17A.

**4.6(2) Rehearing.** Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within 20 days after the issuance of any final decision by the department in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such an application for rehearing shall be deemed to have been denied unless the agency grants the application within 20 days after its filing.

**643—4.7(17A) Judicial review.** Judicial review provisions shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action pursuant to the judicial review provisions of Iowa Code chapter 17A.

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